# Twentieth Annual Report

TO THE LEGISLATIVE ASSEMBLY

Province of Alberta

# Office of the Ombudsman

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LEGISLATIVE ASSEMBLY
PROVINCE OF ALBERTA

# Office of the Ombudsman

April 30, 1987

The Honourable David J. Carter,
Speaker of the Legislative Assembly,
Legislature Building,
EDMONTON, Alberta
T5K 2B6

Mr. Speaker:

I have the honour to submit, for the information of the Legislative Assembly, the Annual Report of the Office of the Ombudsman for the year ending December 31, 1986.

Respectfully,

Brian Sawyer,
Ombudsman

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**From the Ombudsman Act**
**Chapter 0-7 RSA 1980**

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2(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Ombudsman.

27(1) The Ombudsman shall in each year make a report to the Legislature on the exercise of his functions under this Act.

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# INTRODUCTORY REMARKS

Mr. Speaker:

I recently advised you that, for personal reasons, I will be resigning my appointment as Ombudsman on May 15, 1987. This unexpected development gives me a special incentive to summarize the events and impressions not only of the last twelve months but of the more than thirty since I began my term.

The day-to-day operation of the office is well provided for. My staff is experienced, effective and sufficient to handle the workload. The final stage of the modest automation I have introduced to the office will come into play during the summer of 1987 when we computerize our indices and produce, on a monthly basis, a brief report summarizing all the inquiries — oral as well as written, premature as well as jurisdictional — that we receive concerning the various departments and agencies of the provincial government. Deputy ministers and heads of agencies who choose to review the report thus produced will be provided with a meaningful summary of complaints about the areas of government for which they hold responsibility.

As is customary, statistical information and examples of cases are presented later in this annual report. I am reluctant to attach significance to the 12 percent increase in the number of complaints over the 1985 figure, for a review of the twenty-year history of the office shows a periodic rise and fall in caseloads, with an apparent cycle of five to seven years. I suspect that unless the jurisdiction of the Ombudsman is broadened the caseload will stay at about its present level and perhaps even decline moderately. One reason for the latter possibility is readily apparent: over the years, prompted in part by investigations made by this office, departments have developed some fairly effective internal mechanisms for settling problems before they are brought to my attention.

Some of the increased workload was undoubtedly generated by the publicity arising from the visits my staff and I paid to smaller communities throughout the province. I visited twenty-eight cities or towns during the year, meeting with complainants and speaking, whenever invited, to local service clubs or Chambers of Commerce. A surprising number of complaints were brought to my attention during these visits, and I consider it important to continue this time-consuming but effective method of reaching out to the public. Rural Albertans in particular may be more inclined to drop in for a casual chat than they would be to use less personal means of communication to discuss their problems.

From time to time there has been media criticism that I maintain too low a profile. Such observations were often accompanied by a comparison with the approach of my predecessor, Dr. Randall Ivany. The simple fact is that each Ombudsman brings to the job his or her own sense of priorities and how best to accomplish the task. Dr. Ivany is by nature more outspoken than I, and his approach was effective for him because that was what he was comfortable with. Mine tends more towards a mediator's approach because I believe it provides a more effective use of my talents.

I made it clear when appointed that I intended to concern myself with the resolution of citizen complaints through careful negotiation rather than with coverage in the newspapers or on the six o'clock news. It is my conviction that the public airing of complaints brought to my office should be used only as a last resort by the Ombudsman when other avenues have proved unsuccessful, just as I am the last resort for citizens who have unsuccessfully tried other methods of resolving their complaints.

I believe one should not underestimate the effectiveness of quiet diplomacy in an atmosphere of mutual respect. Anticipation of confrontative approaches may hamper the incentive of public servants to find creative solutions, and hence the more forceful means that are available to be used may be more effective by being used rarely. There are those who disagree with my approach, including some who express satisfaction with the results I have obtained, but I remain content in the knowledge that no Ombudsman will — or should — please everybody.

I am sad to report that Dr. Ivany's health has deteriorated to the point where he announced, in December 1986, that he was terminally ill. His announcement and acceptance of the fact are brave and entirely typical of the man. I salute him for all he has done for the office of the Ombudsman, not only in Alberta but internationally.

As I prepare to leave office I have three observations to make regarding the function and effectiveness of the Ombudsman in this province. They concern the role of the Ombudsman in representing the interests of the mentally ill, the relationship between the Ombudsman and the Attorney General's office, and the term of office of the Ombudsman. I will deal with each in turn.

1. One of the findings reached by the task force that reviewed the Mental Health Act in 1982 deserves strong support. The Drewry report concluded that "all involuntary [mental] patients throughout the province . . . should be entitled to call upon or resort to the services of the Ombudsman." This recommendation was made in the face of amendments to the Mental Health Act in 1981 that had set the stage for removal of the two mental hospitals from the Ombudsman's jurisdiction, the theory presumably being that mental patients, like all other hospital patients in the province, should resolve their problems with the hospital director or the hospital board. These amendments have not yet been proclaimed, and I recommend that they not be.

I would go further than the Drewry report's recommendation. I believe that all mental patients, not just those who are involuntarily institutionalized, need a full-time advocate: someone who is independent rather than being subordinate to hospital authorities; someone who can receive complaints from and represent all those who have a lessened capacity to argue their case.

The management and boards of the two hospitals have willingly extended cooperation to me on many occasions. The problem is that an internal complaint system inevitably develops a bureaucracy of its own that hinders access to those who most need it. All too often it has been evident to me that the mentally ill, and particularly those who suffer from serious disorders, find it extremely difficult to comprehend processes set in place for their protection. An independent advocate whose role it would be to work strictly on their behalf could provide immediate and easy access to persons who may be easily

discouraged from speaking up for themselves.

Advocacy on behalf of mental patients is not a novel idea. Each of the ten psychiatric hospitals in Ontario has a patients' advocate to advise patients and staff of patients' rights and to act on the instructions of patients to resolve concerns, queries and complaints. The advocates report through a Psychiatric Patient Advocate Office to the Minister of Health. It is also worth noting that the director of the Michener Centre, the treatment centre in Red Deer which looks after those who are mentally handicapped, is actively pursuing the establishment of a patients' advocate. It is a move I support wholeheartedly.

2. My jurisdiction over complaints concerning actions of the Department of the Attorney General is affected by section 12(1)(b) of the Ombudsman Act, which precludes me from investigating "any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings".

From time to time I have received complaints about the actions of Crown counsel or solicitors acting on behalf of the government. In most cases, what is being complained about relates very much to decisions made in the course of providing legal advice or litigating a case. In some instances, however, the boundaries between legal decision-making and administrative decision-making are not distinct, and it has sometimes been tempting to speculate that the drafters of section 12(1)(b), in drawing a complete exclusion around the activities of government lawyers, simply overlooked the fact that certain of their actions may be purely administrative in nature. I have had some interesting discussions with the Deputy Attorney General and his agents on the point, and he has thus far persuaded me that, in view of the language of the statute, his broad interpretation of my lack of jurisdiction ought to prevail.

Few decisions have more serious consequence for a citizen than those taken by the Attorney General or his agents. In certain instances the Attorney General has acknowledged an inadvertent error, and an ex gratia payment is often the result. Where there is disagreement, however, the usual position is to suggest that the complainant take the matter to court. If the stakes are high, as in the case of Susan Nelles in Ontario, then litigation is probably the answer, but where the issues are less significant and rewards of litigation doubtful, a citizen who feels unfairly treated will, as a rule, be intimidated by the cost and complexity of challenging the Crown.

The result is that, for all practical purposes, government lawyers are accountable for their administrative actions to no one outside their own department. I believe that the very principles that gave rise to the formation of an Ombudsman's office suggest the desirability of establishing a means whereby decisions of barristers and solicitors in the public service can, under certain circumstances, be reviewed by an independent agency. A body modelled after the judicial council that reviews the actions of judges might provide an appropriate solution.

3. For some time now I have thought that the Legislature should reconsider the length of the term of appointment of the Ombudsman. Currently the Act provides for a five-year appointment with re-appointment an option. I believe an appointment of seven or ten years, non-renewable, would free an Ombudsman's decisions from any inference that he or she is concerned

about re-appointment. It would also ensure a regular and predictable renewal of philosophy and energy in the office.

The year under review has seen a number of personnel changes in the office. My director of administrative services, Joe Pennett, retired after sixteen years of service. Alex Weir, who served three Ombudsmen over a seventeen-year span, transferred within the government service. Marcel Arcand, previously an assistant deputy minister with the Department of Social Services, has come on board as my executive director. Jack Ratcliff, one of my senior investigators, will retire after seventeen years of service. They and the rest of my staff have served the citizens of this province well, and I truly appreciate the advice, assistance and support they have given me. A recent advertisement to fill two vacancies drew over 700 applications. The strong qualifications of a number of applicants indicate that we will have no difficulty in maintaining high standards.

I have enjoyed negotiating with and sometimes arguing with the many public servants with whom I have come in contact. Public servants are sitting ducks for criticism, yet I have found the great majority to be reasonable, hard-working and dedicated to their tasks. I take strong exception to those who suggest that the term "public servant" has some sort of negative connotation. There are few tasks more important or complex than the fair and equitable management of public resources.

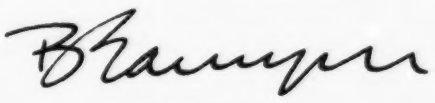
I have been lucky, for I have had a varied and challenging career in the public service at the federal, municipal and provincial levels. After thirty-six years one becomes reflective. When I joined the Royal Canadian Mounted Police in 1951 I was bemused by some of the formalities that were customarily observed. Now that I have grown older, some of those traditions seem not so bad after all. As I take leave of the public service and the Legislature, to whom I have been responsible, and you, Mr. Speaker, through whose office I was appointed, I now find it appropriate to resurrect one of those old formalities.

It is, therefore, with much sincerity and more than a little nostalgia that I write

I have the honour to be,

Sir,

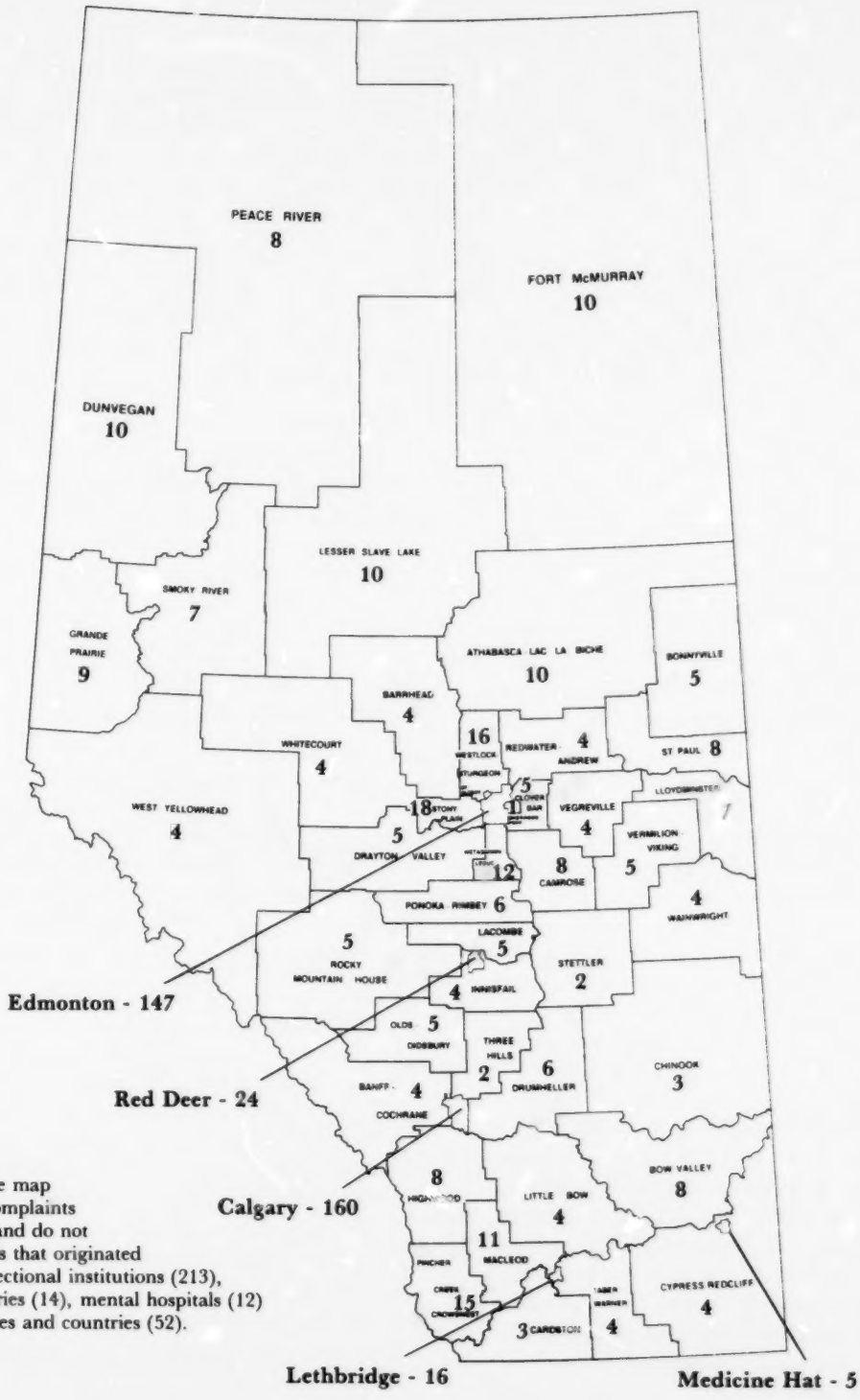
Your obedient servant



Brian Sawyer
Ombudsman

March 19, 1987

# GEOGRAPHICAL ORIGIN OF COMPLAINTS




The figures on the map refer to written complaints received in 1986 and do not include complaints that originated in provincial correctional institutions (213), federal penitentiaries (14), mental hospitals (12) and other provinces and countries (52).

## COMPLAINTS RECEIVED AND INVESTIGATIONS CONCLUDED

*Complaints received*

All told, more than twice as many telephoned complaints and inquiries were recorded in 1986 as in the previous year.

**Telephoned Complaints and Inquiries**

| | |
|---|---|
| Oral complaints: jurisdictional | 1,290 |
| Oral complaints: non-jurisdictional | 1,731 |
| Requests for information | 1,150 |
| Total | 4,171 |

Assistance provided to telephone callers is practically as large a function of the Office of the Ombudsman as is the formal investigation of complaints. Advice is given about how to deal with complaints about all kinds of matters — problems as diverse as the barking of the neighbour's dog, the eccentricities of Canada Post, interest rates on credit cards, and tape recordings from telephone solicitors. The most commonly heard complaints about matters outside our jurisdiction have to do with the actions of lawyers, police, courts and the Unemployment Insurance Commission. In addition, we answer requests for information about subjects as varied as the time of the opening of legislative sittings, the meaning of clauses in rental agreements, how to apply for government grants and what to do to get a criminal conviction pardoned.

Requests for information and complaints about matters outside our jurisdiction accounted for almost seven out of every ten calls made to our office in 1986. The remaining 30 percent were from callers wishing to voice complaints about actions of the public service. Those who had not followed existing avenues of appeal were advised how to do so. Others were advised to write letters to us summarizing their complaints, and 143 callers proceeded to do so.

**Written Complaints Received**

| *Year* | *Written complaints* | *Within jurisdiction* | *Accepted for investigation* |
|---|---|---|---|
| 1986 | 915 | 733 | 384 |
| 1985 | 817 | 616 | 333 |
| 1984 | 986 | 752 | 411 |
| 1983 | 1,025 | 832 | 428 |
| 1982 | 981 | 732 | 447 |

**Written Complaints Outside Jurisdiction**

| | |
|---|---|
| Private matters | 80 |
| Municipalities | 28 |
| Federal and other provincial governments | 34 |
| Courts | 5 |
| Hospitals, colleges, universities | 12 |
| Requests for assistance/information | 23 |
| Total | 182 |

Altogether, 915 letters seeking assistance of one form or another were received, representing a 12 percent increase over the 1985 figure. Of these, 182 either were complaints against bodies excluded from our jurisdiction or else were seeking information rather than complaining. The writers of these were given advice regarding available complaint mechanisms or provided the information sought.

The great majority of the 349 written complaints that were within our jurisdiction but not investigated came from citizens who had not pursued avenues of appeal provided for in provincial legislation. We provided such complainants with information about appeal routes and advised them that we would be available as a last resort should they continue to feel unfairly treated after their appeals had been processed. In addition, sixty complaints that were either of an urgent nature or easily settled by a phone call or two were resolved informally without investigation.

The remaining 384 complaints led to formal investigations.

*Files closed*

The table below describes the action taken on the 680 jurisdictional files that were closed by our office in 1986.

**Action Taken on Jurisdictional Files Closed in 1986**

| | | |
|---|---|---|
| **Files carried over from previous years** | | **84** |
| **Files opened in 1986** | | **733** |
| **Investigated** | | **326** |
| Subsequently discontinued | 43 | |
| Complaint justified | 61 | |
| No administrative error identified | 222 | |
| **Not investigated** | | **354** |
| Resolved informally | 60 | |
| No authority to investigate | 56 | |
| Other remedy or appeal available | 191 | |
| Declined on discretionary grounds | 47 | |
| **Files closed in 1986** | | **680** |
| **Files carried over to 1987** | | **137** |

Complaints that are **resolved informally** are those where it is apparent either that immediate action is required if a remedy is to be provided or that the complaint may be quickly resolved by a telephone call. The first three case summaries on the following pages provide examples of such complaints.

Complaints which the Ombudsman has **no authority to investigate** include those about the actions of lawyers acting for the Crown and those having to do with non-administrative actions of the legislative and executive branches of government.

The Ombudsman must also decline to investigate complaints for which there are **other remedies or appeals available** under any Act, until such remedies or appeals have been exercised. Examples of appeal bodies to which we refer complainants are the Citizens Appeal Committee of the Department of Social Services and the Claims Services Review Committee of the Workers' Compensation Board.

Complaints **declined on discretionary grounds** are those which, under section 14(2) of the Ombudsman Act, the Ombudsman declines to investigate because the matter complained of has been known to the complainant for more than twelve months, the subject matter of the complaint is trivial, the complaint is frivolous or vexatious or is not made in good faith, or the complainant does not have a sufficient personal interest in the subject matter of the complaint.

When a complaint is investigated, a letter is sent to the appropriate deputy minister describing the complaint and requesting comments on the allegations that have been made. Once a response is received, an assistant to the Ombudsman gathers sufficient information, through interviews and research, to reach a conclusion regarding the merits and appropriate resolution of the complaint.

Of the 326 investigations concluded during 1986, eight were **discontinued** as a result of the request or action of the complainant. Another thirty-five were discontinued by the Ombudsman either on learning that a department, on being notified of a complaint, had taken immediate steps to resolve it, or on receipt of information indicating further investigation to be unnecessary.

When a complaint is found to be **justified**, either in whole or in part, a remedy is usually provided by the department concerned following simple negotiation between the Office of the Ombudsman and senior public servants. Of the sixty-one complaints considered justified, fifty-six were resolved in this way.

The provisions of section 20 of the Ombudsman Act, which provides for a somewhat more formal recommendation to a deputy minister or minister, were invoked in five cases. In four of them, our recommendation was accepted by the minister or deputy minister. On the remaining file the deputy minister provided me with a convincing argument that his rejection of my recommendation was appropriate under the circumstances, and I declined to push the matter further.

On at least seventeen occasions during the year, following the resolution of complaints, departments altered policies or procedures as a consequence of investigations by our office.

| Action Following Identification of Departmental Error | |
|---|---|
| Error corrected or adjustment made by department | 56 |
| Formal recommendation to minister/deputy minister | 5 |
| Total | 61 |
| Departmental policy or procedure revised at Ombudsman's suggestion | 17 |

In many cases in which **no departmental error** was identified, we were nevertheless able to provide useful assistance to complainants such that their problems were effectively resolved. This was typically the case when complaints arose from a misunderstanding or breakdown in communication that could not be said to be anyone's fault; in such situations we generally acted as a go-between whose role it was to trace the source of a difficulty and come up with a solution acceptable both to the complainant and to the department. Thus, while departmental errors were identified in 22 percent of investigations brought to conclusion, useful assistance towards the resolution of a problem was provided to complainants in 32 percent of such investigations.

## CASE SUMMARIES AND DEPARTMENTAL STATISTICS

Some calls and letters to the office are most appropriately dealt with on an informal basis rather than becoming the subject of protracted investigations. A caller may require assistance that will be useless unless quickly received. It may be evident that there has simply been a communication problem that we can clear up expeditiously with a couple of phone calls. Or a caller may be elderly or confused and find it difficult on his own to sort out a fairly straightforward problem that we can deal with promptly.

Such informal resolutions of complaints — or, more often, simply pleas for assistance — are part and parcel of the service our office provides to the public. Even though the Ombudsman Act envisions the office purely in terms of its formal investigation of complaints, in a sense we act as general trouble-shooters for all manner of problems faced by ordinary people in their dealings with government.

Often ours is the number people call after being shuffled from office to office. The frustration experienced by citizens unfamiliar with the workings of bureaucracies can be immense. In using our resources to help callers find the quickest path to their goals, we not only attempt to increase the efficiency with which government serves its constituents but also endeavour to live up to the spirit which gave rise to the development of the ombudsman institution in the first place — namely the principle that government should be as accessible as possible to the citizens it serves.

The first three case summaries in this report have been chosen to illustrate examples of complaints that were informally resolved during the year.

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**Case summary 1**

### Home Care Assistance

A retired nurse in her eighties called to see if we could help her get home care for her bed-ridden husband, who suffered from diabetes and a heart condition. She was getting two hours' home care a day from a municipal service but had been told that no more was available because of funding cutbacks. She was exhausted from lack of sleep and was desperate for assistance.

The home care service had advised her that she ought to put her husband in a nursing home. She refused to consider it. She had been married to him for fifty years and was determined that he should not be forced to move out of his home into unfamiliar surroundings. Her husband's doctor agreed with her. What she wanted was enough funding to enable her to hire some help for a few more hours a week so she could get enough rest to care for her husband properly. She had no idea where to turn next and was confused by the assortment of bureaucracies she had been attempting to deal with.

We learned that the Department of Social Services had turned down her application for assistance because the combined pensions received by the couple slightly exceeded the criteria of eligibility for a home care allowance. However, she was unable to afford the $17 hourly rate for private nursing care, and volunteer homemakers were forbidden by their agency to assist her husband.

We called several volunteer agencies to see if any help could be found through that route, but there were none that provided nursing help. It was clear that the Social Services district office was bound by departmental regulations, even though it appeared that the cost of keeping the woman's husband in a nursing home would be greater to the taxpayer than would be the cost of providing her with extra help.

We explained to her how to appeal the decision of her Social Services district office to the Citizens Appeal Committee — a committee of citizens appointed by the minister to review and, if necessary, vary decisions made in the provision of social services programs. The committee, unlike departmental employees, has

the flexibility to bypass departmental policies when it makes sense to do so. It met with our complainant, decided that her pressing circumstances deserved special consideration, and authorized the payment of a $500 a month subsidy for six months to enable her to hire the help she needed.

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**Case summary 2**

### No Money for the Payroll

Among the government's employment initiatives strategies was a program to subsidize the wages of seasonal help employed by Alberta businesses. The owner of an equestrian farm took advantage of the program to hire some students for the summer. She had been told by a Manpower regional office that she could expect to receive wage-subsidy cheques in time for each monthly payday.

When some of the cheques failed to materialize, the woman contacted the regional office and was told by one person that there had been computer problems and by another that an amalgamation of office services could be to blame. She had already taken out a bank loan in an effort to cover the students' salaries, and she did not want to have to put the scheme on hold for lack of a subsidy.

She called to tell us her story, and because of the urgency of her situation we decided to make some immediate inquiries rather than asking her to write us a letter. We contacted an official at the central office of the employment initiatives division who took down the details and said he'd see what could be done.

A few days later the complainant called us to say that everything had been sorted out. She had received the delayed cheques and had been assured of prompt delivery of those still to come.

---

**Case summary 3**

### Money for the Road

The father of two infant children called to say he hadn't received his monthly social assistance cheque and had no money to buy food for his family. Every time he called his social worker her line was busy, but when he went in to see her he was told he couldn't do so without an appointment.

We eventually got through to the worker and learned that the cheque had been withheld because the man had moved without notifying the district office of a new address. He told us that he and his family were living in their truck while he tried to find a home.

The man was also upset because the Social Services office had told him it was unaware of an application he had filled out for Assured Income for the Severely Handicapped benefits some months earlier. We contacted his doctor and found out that the application had never been forwarded from his office; he agreed to send it over to Social Services immediately.

Shortly afterwards the man called to say that he was on the road to Vancouver to attend his father's funeral. He had been given gas money by a church but still had nothing for food. After arranging for him to call us back from further down the road, we contacted the manager of his Social Services district office. She in turn agreed to call ahead to the next town on his route to authorize provision of food vouchers to him.

---

# Department of Advanced Education

| | | |
|---|---|---|
| **Files carried over from previous years** | | **1** |
| **Files opened in 1986** | | **7** |
| **Investigated** | | **5** |
| Subsequently discontinued | 1 | |
| Complaint justified | 3 | |
| No administrative error identified | 1 | |
| **Not investigated** | | **1** |
| Resolved informally | 1 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **6** |
| **Files carried over to 1987** | | **2** |

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**Case summary 4**

### Lost Document Puts Loan on Hold

We frequently receive complaints about what is alleged to be a too rigid application of government regulations. A rule is a rule, people are told, even when they argue they have been victims of events beyond their control and ought to deserve special consideration.

Such "red tape" complaints are often a result of the fact that lower level public servants simply don't have the authority to bypass rules, even when common sense calls for exceptions to be made. The senior officials with whom we deal are generally quick to set matters right when it appears an injustice has been done.

The loan application put in by a summer school student was approved, but the money didn't come through. She waited a while, assuming that processing was customarily slow, and finally called the Students Finance Board to find out what had happened.

By this time her summer session had ended and she was enrolled at another institution for the fall. She was told that her loan document had apparently been lost in the mail. The difficulty now was that in order for her to receive the money, a replacement document would have to be signed by her summer university, but this could not be done because the statutory deadline had passed and she had already been approved for a fall session loan.

She told us she felt like she was being punished for a situation beyond her control, and we were inclined to agree. She had been told by board officials that she should have made her inquiries much earlier, yet we often hear from students who refrain from doing so simply because they have been instructed to be patient and to expect long delays prior to loan disbursements.

A letter from us was met with immediate corrective action by the department. The chief executive officer of the board ordered a reassessment of the student's current application in such a way as to enable her to receive the missing money.

The complainant was pleasantly surprised at the result after having concluded it was a lost cause to pursue the matter any further. "I did not realize the political system actually does work on behalf of the citizen," she wrote. "I am very grateful to you for your assistance."

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**Case summary 5**

### "Threatened" Official Withholds Information

An Alberta resident enrolled in a French studies course at a Quebec university wrote to the Department of Advanced Education requesting information about grants available for second-language programs. When he had received no reply after a month's wait, he wrote to us to see if we could expedite a response. "Is it the procedure of this department to ignore requests for information?" he asked.

We contacted the department and learned that an official was delaying his reply to the complainant in view of what he perceived to be threatening remarks contained in the correspondence. After complaining about a departmental official's failure to tell him about a

grant application deadline, which he consequently missed, the student had closed his letter to the department by saying, "Copies of this letter have been made. As I feel I have a legitimate problem, these copies may be sent to my MLA, the Ombudsman and the department of Education."

As a result of our intervention on the complainant's behalf, the department apologized to him for its failure to respond to him and agreed to waive the application deadline should he wish to apply for one of the federal fellowships for the study of French administered by the provincial government.

A month later we made a follow-up call to the department and learned that the grant application had been approved and that a cheque had been sent out. Shortly thereafter, the department sent out a special mailing of information about second-language programs to educational institutions and teachers' publications.

---

# Department of Agriculture

| | | |
|---|---|---|
| **Files carried over from previous years** | | **1** |
| **Files opened in 1986** | | **21** |
| **Investigated** | | **11** |
| Subsequently discontinued | 0 | |
| Complaint justified | 2 | |
| No administrative error identified | 9 | |
| **Not investigated** | | **8** |
| Resolved informally | 0 | |
| No authority to investigate | 2 | |
| Other remedy or appeal available | 3 | |
| Declined on discretionary grounds | 3 | |
| **Files closed in 1986** | | **19** |
| **Files carried over to 1987** | | **3** |

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**Case summary 6**

### No Job for Opinionated Worker

A seasonal worker at a government tree nursery was surprised to learn that she wouldn't be rehired after working there for ten summers. When she asked why, she was told she had a big mouth.

On the work evaluation form that had been filled out when she had last been laid off, her immediate supervisor had described her as an excellent employee. However, a more senior supervisor had recommended against re-employment because comments she had made about fellow workers had resulted in production decline. In addition, she had continually complained about having to wear a hard-hat on the job. Her attitude and the frequency of her comments had led to her being perceived as a disruptive influence.

We brought to the department's attention the fact that the complainant's supervisors had erred in not discussing her work evaluation with her at the time she had been laid off. However, this oversight in itself was not considered sufficient to justify making a recommendation on her behalf, as employers of seasonal workers are under no obligation to keep individuals on from one year to the next.

# Department of the Attorney General

| | | |
|---|---|---|
| **Files carried over from previous years** | | **3** |
| **Files opened in 1986** | | **45** |
| **Investigated** | | **17** |
| Subsequently discontinued | 2 | |
| Complaint justified | 3 | |
| No administrative error identified | 12 | |
| **Not investigated** | | **22** |
| Resolved informally | 6 | |
| No authority to investigate | 7 | |
| Other remedy or appeal available | 6 | |
| Declined on discretionary grounds | 3 | |
| **Files closed in 1986** | | **39** |
| **Files carried over to 1987** | | **9** |

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**Case summary 7**

### Court Clerk's Mistake Leads to Driver's Arrest

There are two circumstances in which material compensation to complainants seems particularly appropriate. One is when monetary loss or property damage results from the action of a government official. The second occurs when an individual has been wrongfully deprived of his liberty.

A man charged with impaired driving appeared at a preliminary hearing, at which time the presiding judge set a date for trial. Some weeks later the police came to his place of work and arrested him for failing to appear at his trial. He was processed through the remand centre and required to enter into a recognizance to secure his release. The charge of failing to appear was eventually dropped after his lawyer was able to demonstrate to Crown counsel that the court clerk incorrectly recorded the trial date.

The man complained to us that in view of the fact that his arrest was the result of a mistake by a government official, consideration should be given to securing some compensation for him. We conveyed his concern to the Department of the Attorney General, which proposed and provided a $500 ex gratia payment for lost wages and extreme embarrassment.

---

**Case summary 8**

### Court Judgement No Guarantee of Payment

A complaint from a courier company employee illustrated how important it is that public servants be familiar with the legislation on which they base their decisions.

Having failed to receive several paycheques, the worker sued his firm and won a judgement that led to the garnishment of his former employer's wages. When sufficient funds had accumulated with the clerk of the court to pay out the judgement, the man went to the sheriff's office to collect his money.

To his dismay, he was informed that the Workers' Compensation Board, which had also filed a judgement with the sheriff, had statutory priority over him in distribution of the collected funds. He called the WCB to argue the point and was told nothing could be done; it was the law.

Such an arrangement seemed unfair to the employee, and he called our office to see if we could do anything on his behalf. We examined the Workers' Compensation Act and found that the priority given to WCB claims does not extend to judgements in respect of unpaid wages. We contacted WCB solicitors, who agreed that our interpretation was correct and advised the sheriff's office of the exception to the rules regarding priority. As a result, the accumulated funds were released to our complainant in full satisfaction of his judgement.

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**Case summary 9**

## Pain and Suffering Compensation for Victims of Crime

A restaurant owner who was shot and badly wounded by an assailant complained to us about his treatment by the Crimes Compensation Board. He was upset that questions about his actions and intentions during the incident had forced him to relive a most painful experience; he thought such a course of questioning to be insensitive and unnecessary. He also objected to the fact that he had received no compensation for pain and suffering.

The chairman of the board explained that the questions had been directed to the complainant in order to establish whether he had attempted to prevent the crime, the reason being that he would be eligible for pain and suffering compensation only if he had done so. It was apparent to the board that the restaurant owner had had no warning of his assailant's intention and no chance to take preventive measures even if he had wanted to.

A comparative study of legislation across Canada showed that, among provinces that make pain and suffering awards, only Alberta limits such compensation to victims wounded while attempting to prevent a crime. The result is that Alberta rarely provides pain and suffering awards to private citizens while almost automatically compensating police officers, whereas some other provinces do so in practically all claims to their crimes compensation boards.

The rationale for the distinction is that encouragement is offered to the "good Samaritan" who intervenes to prevent a crime taking place. While such an intention may be well intended, the result is that a moral distinction is made among innocent victims, some of whom, like our complainant, have no opportunity either to intervene or defend themselves. In view of the fact that compensation for pain and suffering may constitute the major part of an award by the Crimes Compensation Board, the justification for such a distinguishing criterion appears questionable.

While unable to support the complainant's claim for pain and suffering compensation because of the clear statutory prohibition, we suggested that the department consider amending its legislation to withdraw the distinction among victims. The Deputy Attorney General advised us that the section in question was being reviewed.

---

# Department of Career Development and Employment

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **10** |
| **Investigated** | | **4** |
| Subsequently discontinued | 1 | |
| Complaint justified | 0 | |
| No administrative error identified | 3 | |
| **Not investigated** | | **2** |
| Resolved informally | 2 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **6** |
| **Files carried over to 1987** | | **4** |

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**Case summary 10**

### A Disputed Phone Call

"Get it in writing" remains the number one rule when it comes to communication with government, especially when agreements involving money are concerned. Citizens who are obtaining information by phone should always find out who they are talking to and ask for a follow-up letter if an important agreement is being approved. Many disputes that we investigate arise from conflicting recollections of what was said, and most of these could be avoided if verbal agreements had been documented.

A farm implement dealer who needed summer help applied for assistance from the Alberta Manpower Wage Subsidy Program to hire two people. The program had been set up as an incentive to employers to hire people with limited skills and provide them with on-the-job training. Some weeks later, before he had received official approval of his application, he found a man he wanted to hire as a salesman and proceeded to do so.

In the autumn the Department of Manpower, as it then was, conducted an audit that indicated that the employer was in violation of the program guidelines because he had filled the position before receiving official approval. The department demanded that he return the $1,720 he had received to supplement the wages of the salesman.

The implement dealer refused to repay the amount. He said that while it was true that he hadn't received approval in writing at the time he had hired the salesman, he had telephoned an administrator of the program and had received verbal authorization; however, he couldn't remember the name of the person he had talked to.

The department had no record of such an arrangement and said it was contrary to policy to provide approval over the phone to employers. It further pointed out that two days after the alleged conversation, the employer had told the department that no one had been hired. The employer said that the statement had been made in reference to the second position for which he had applied for assistance; he had assumed the department had been already aware of the first hiring.

When the department refused to budge from its insistence that the money be repaid, the employer complained to our office. The department told us that the reason it adhered so strictly to the regulations regarding approval of applications was to discourage employers from seeking a subsidy for positions they would have created without help from the program. However, it agreed that the regulations might have been applied a little too zealously in the case of the complainant, and decided to give him the benefit of the doubt and drop its request for a refund.

---

# Department of Community and Occupational Health

| | |
|---|---|
| **Files carried over from previous years** | **17 (16)*** |
| **Files opened in 1986** | **95 (91)** |
| **Investigated** | **65 (62)** |
| Subsequently discontinued | 8 (8) |
| Complaint justified | 5 (3) |
| No administrative error identified | 52 (51) |
| **Not investigated** | **31 (31)** |
| Resolved informally | 4 (4) |
| No authority to investigate | 1 (1) |
| Other remedy or appeal available | 24 (24) |
| Declined on discretionary grounds | 2 (2) |
| **Files closed in 1986** | **96 (93)** |
| **Files carried over to 1987** | **16 (14)** |

* Bracketed figures designate complaints against Workers' Compensation Board.

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**Case summary 11**

### Incomplete Evidence Leads to Loss of Benefits

A woman who injured her back while working as a stock clerk received workers' compensation benefits until she was declared fit to return to work by the Workers' Compensation Board. She appealed the decision first to the Claims Review Committee and then to the members of the board, who found insufficient available medical evidence to indicate a continuing disablement. The WCB routinely advises unsuccessful appellants who are unhappy with its decisions that a further appeal to the Ombudsman is available, and so she approached us.

Two things became apparent during our meetings with the complainant and study of the board's files. First, the results of a myelogram (bone scan), which lent support to her claim regarding the degree of her disablement, had not been available to the board at the time of her appeal. Secondly, the board's conclusion that she was not interested in being retrained for alternative employment had apparently resulted from a misunderstanding; she was close to retirement age and did not have sufficient education to make retraining practical.

After we brought our findings to the attention of the board, it reviewed the case again and reversed its earlier decision, granting her a permanent disability award.

---

**Case summary 12**

### Drawbacks to Lump Sum Settlements

An accident in the spring of 1982 left an oilfield worker with internal injuries that were difficult to diagnose. He was placed on compensation and eventually underwent an operation that appeared to alleviate his worst symptoms, but an attempt to return to work was short-lived.

The Workers' Compensation Board's efforts to determine an appropriate amount of pension were complicated by evidence that the worker was suffering from an old back injury that was not work related. The board concluded that he was eligible for a 35 percent partial disability pension, of which 10 percent was for psychological damage, 20 percent for aggravation to a pre-existing spinal condition and 5 percent for the abdominal injury and resulting surgery. Early in 1986 the board acceded to his request for a lump sum settlement and gave him $167,000.

The worker complained to us that the award should have been for total disability. He expressed the fear of facing a future of dependence on social assistance. We found no evidence of total disability in his medical records and ascertained that proper procedures had been followed by the board in processing his claim.

We did, however, criticize the board for the practice it follows from time to time of settling claims with lump sum payments at the request of claimants rather than providing for monthly pensions. We expressed concern that while most injured workers are likely to be prudent in

administering lump sum payments, there will undoubtedly be those who treat it like a windfall and spend or invest it unwisely. Under such circumstances the board is placed in an unenviable position by those who reason that it owes them permanent assistance.

Sir William Meredith, an early proponent of workers' compensation, made a cogent argument against lump sum payments in 1913 when he stated: "The payment of lump sums is contrary to the principle upon which compensation Acts are based and is calculated to defeat one of the main purposes of such laws — the prevention of the injured workman becoming a burden on his relatives or friends or on the community. . . ." The validity of Meredith's warning has been borne out by a number of complaints to our office by workers who had previously sought and expressed satisfaction with lump sum payments.

While it may be convenient for the board to finalize contentious claims by making lump sum settlements, especially when faced with persistent claimants who may more easily be satisfied with the opportunity of having a large sum at hand, it is doubtful that such a practice is in the public interest. The public — and injured workers — will best be served if the board's current reassessment of lump sum payments results in a termination of the practice.

# Department of Consumer and Corporate Affairs

| | | |
|---|---|---|
| **Files carried over from previous years** | | **1** |
| **Files opened in 1986** | | **7** |
| **Investigated** | | **3** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 3 | |
| **Not investigated** | | **3** |
| Resolved informally | 0 | |
| No authority to investigate | 1 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 2 | |
| **Files closed in 1986** | | **6** |
| **Files carried over to 1987** | | **2** |

# Department of Culture

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **1** |
| **Investigated** | | **0** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 0 | |
| **Not investigated** | | **1** |
| Resolved informally | 0 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 1 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **1** |
| **Files carried over to 1987** | | **0** |

# Department of Economic Development and Trade

| | | |
|---|---|---|
| **Files carried over from previous years** | | **1** |
| **Files opened in 1986** | | **5** |
| **Investigated** | | **1** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 1 | |
| **Not investigated** | | **2** |
| Resolved informally | 0 | |
| No authority to investigate | 2 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **3** |
| **Files carried over to 1987** | | **3** |

# Department of Education

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **4** |
| **Investigated** | | **0** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 0 | |
| **Not investigated** | | **0** |
| Resolved informally | 0 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **0** |
| **Files carried over to 1987** | | **4** |

# Department of Energy

| | | |
|---|---|---|
| **Files carried over from previous years** | | **3** |
| **Files opened in 1986** | | **7** |
| **Investigated** | | **6** |
| Subsequently discontinued | 1 | |
| Complaint justified | 1 | |
| No administrative error identified | 4 | |
| **Not investigated** | | **3** |
| Resolved informally | 0 | |
| No authority to investigate | 2 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 1 | |
| **Files closed in 1986** | | **9** |
| **Files carried over to 1987** | | **1** |

# Department of Environment

| | | |
|---|---|---|
| **Files carried over from previous years** | | **3** |
| **Files opened in 1986** | | **9** |
| **Investigated** | | **7** |
| Subsequently discontinued | 1 | |
| Complaint justified | 2 | |
| No administrative error identified | 4 | |
| **Not investigated** | | **1** |
| Resolved informally | 0 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 1 | |
| **Files closed in 1986** | | **8** |
| **Files carried over to 1987** | | **4** |

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**Case summary 13**

### No Water in the Well

During our visits to rural communities in eastern Alberta, a number of farmers came to talk about the drying up of shallow wells in the wake of a regional drought.

One couple found themselves in difficult circumstances after their water supply had diminished to the point that they were hard pressed to balance the needs of the pigs and chickens against those of the washing machine, and now that freeze-up was upon them there was no alternative supply to be had from the nearby slough.

Desperately short of cash, the couple applied for a grant to drill a new well under the Alberta Drought Emergency Water Supply Program. Their application was turned down on the strength of a consultant's report that their well problem was caused not by the drought but by silting in or casing clogging. They were puzzled by the response, as, to the best of their knowledge, no one had come to look down their well, and a local well-drilling contractor agreed with their belief that their well was drying up because of a lowering of the water table.

Our investigation prompted the Department of Environment to conduct a review of groundwater studies of the area around the farm, which led to the conclusion that the consultant who had recommended against approval of the grant application had probably been in error. The department decided to give our complainants the benefit of the doubt, and the decision to deny them a grant was reversed.

The farming couple was delighted with the result of our investigation. They wrote: "After our application had been rejected twice and we thought we had exhausted every possibility, we really weren't optimistic or even expecting any assistance. When your office took on our case, we had merely reached a point of wanting to express the possible unjustness of government programs. To our pleasure, we were not only heard — we saw results.

"What a joyous Christmas we had, knowing we were actually going to get water! Thank you again for supporting a small-farm operation. It has given us incentive to hang in there and keep on farming."

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**Case summary 14**

### The Contaminated Well

A rural resident complained to us that the Earth Sciences Division of the Department of Environment wasn't doing its job in monitoring the abandonment of drilled water wells. He said his own well had been contaminated by a nearby well that hadn't been properly capped.

The department admitted that its instructions regarding abandonment may have been improperly carried out by the driller of the original well. However, it doubted that the complainant's water had been affected.

We chaired a meeting between departmental officials and the complainant to see what could be done to resolve the problem. The department proposed drilling another well between the two existing ones to determine whether or not an underground aquifer had been contaminated by the abandoned well. It would either produce good water and be turned over to the complainant for only the cost of materials used,

or else it would prove to be contaminated and help establish the origin of the problem.

The complainant thought this seemed like a reasonable solution and asked for time to consider it. As he was never heard from again, the investigation was discontinued.

# Executive Council

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **1** |
| **Investigated** | | **0** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 0 | |
| **Not investigated** | | **1** |
| Resolved informally | 1 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **1** |
| **Files carried over to 1987** | | **0** |

# Department of Federal and Intergovernmental Affairs

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **0** |
| **Investigated** | | **0** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 0 | |
| **Not investigated** | | **0** |
| Resolved informally | 0 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **0** |
| **Files carried over to 1987** | | **0** |

# Department of Forestry, Lands and Wildlife

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **14** |
| **Investigated** | | **6** |
| Subsequently discontinued | 1 | |
| Complaint justified | 2 | |
| No administrative error identified | 3 | |
| **Not investigated** | | **7** |
| Resolved informally | 0 | |
| No authority to investigate | 5 | |
| Other remedy or appeal available | 2 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **13** |
| **Files carried over to 1987** | | **1** |

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**Case summary 15**

### Competition for a Grazing Lease

A farmer expressed to us his concern about the decision of the government to allow a rancher to assign his grazing lease after its ten-year term came up for renewal. The farmer said that cattle hadn't been grazed on the leased land for years and that the person to whom it was being assigned already had another lease that wasn't being fully used. He said the lease should have been cancelled and made available to other applicants. It was such a dry summer that he was having to pasture his own cattle on land that could otherwise have been used for grain or hay, and he considered it unfair not to have a chance at land that he believed would continue to lie unused.

Our investigation showed that the assignment of the lease had been permitted in spite of a recommendation by departmental officials that the lease be cancelled. As soon as the lessee had learned that his lease might be challenged, he had assigned it to his brother.

The deputy minister told us that although regulations to the Public Lands Act provide that the minister may refuse to consent to an assignment, they do not describe any criteria under which such a denial might take place. Leases are rarely cancelled, and ranchers are given up to three years to conform after being warned about breaches of contracts. In the case at hand, the department's legal counsel had advised the minister that in the absence of proof that the lease was not going to be used, the lessee could likely launch a successful suit against the department.

Although it appeared to us inequitable that a lessee should be allowed knowingly to default on his obligations and still retain the right freely to assign his lease, we were advised by the department that an amendment to the regulations would not be practical without the support of a majority of ranchers in the province. The department's statement that such support did not appear to exist was consistent with information we had received from other sources.

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**Case summary 16**

### Tainted Moosemeat Spoils Defendant's Celebration

A group of hunters was confronted in the bush by a wildlife officer who charged one of them with illegal possession of wildlife and confiscated a quarter of moose as evidence.

The first time the accused appeared in court with his agent, the charge of illegal possession was dismissed because the prosecution ticket prepared by the wildlife officer was illegible, having been filled out with a felt pen. The prosecutor then instructed the wildlife officer to replace the charge of illegal possession with a charge of hunting without a valid licence. When the agent of the accused went to court a second time and asked that the new charge be dismissed on a technicality, the judge reserved his decision on the application and set another date. At the agent's next appearance in court, the judge denied the request for dismissal and set a date for trial. The agent's fourth trip to court, five months after the initial charge, was for the trial itself, at which time the prosecutor announced that he had decided to withdraw the

charge.

The hunter's elation at this turn of events turned to dismay when the chief exhibit was returned to him somewhat the worse for wear. He complained to us that the wildlife officer had negligently stored his moosemeat in a garbage bag instead of wrapping it properly. In addition, he thought that his agent, who had been obliged to travel a hundred miles to court on four separate occasions, should be reimbursed for his travel expenses.

We were able to establish that the quarter of moose had not been stored in the manner stipulated by the regulations of the Department of Forestry, and the department agreed to compensate the complainant for his loss by paying him the value of an equivalent amount of beef. However, the department denied responsibility for travel costs incurred by the complainant's agent in connection with court proceedings, as its actions had been entirely under the direction of the Crown attorney prosecuting the case.

We were obliged to terminate our investigation at this point because of the clear exclusion of the actions of Crown counsel from our jurisdiction under section 12(1)(b) of the Ombudsman Act, which provides that "nothing in this Act authorizes the Ombudsman to investigate . . . any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings".

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**Case summary 17**

### Access to a Sawmill

A sawmill operator who showed up on one of our rural visits had no bone to pick with the government, but he had run into a major legal problem and was looking for solutions wherever he could find them.

The lumber from his mill had always been hauled out by truck on an old trail that could no longer be used unless it was upgraded. He had been told by the municipal district that the trail was an ancestral road running across a grazing lease and permission of the lessee would be required. The only catch was the lessee's refusal to grant his consent.

The problem facing the mill owner was that the trail provided the only practical access from the mill to a main highway. The municipal district tried to help out by putting in a road along a road allowance, but it was too steep for loaded trucks to use.

The mill owner had no idea what an ancestral road was; all he knew was that if he couldn't get it fixed up, he would be forced out of business. He accepted the fact that, given the existing law, he might have to wait until the grazing lease expired before action could be taken, but he wanted some assurance that the problem could be rectified in due course.

We brought the matter up with officials at the public lands division of the Department of Forestry, Lands and Wildlife. Their solicitor said an ancestral road is a public highway created by dedication where there is shown an intention of the owner to dedicate it combined with acceptance of the dedication by the public, both of which may be inferred by long and uninterrupted public use. He suggested that a court action might be sought to rule that the trail constituted a public highway, but he doubted whether it would be successful.

Happily, discussion of such a remedy became redundant when the department indicated that the grazing lease would expire shortly and that they would be prepared at that point to issue a licence of occupation to the municipal district, subject to the placement of Texas cattle gates at either end of the trail. Renewal of the grazing lease would then not include the area covered by the licence of occupation.

We subsequently contacted municipal district officials, who had been unaware that such a solution was possible, and they indicated that an application from the mill owner requesting such a licence would be favourably received. The mill owner was greatly relieved to know that use of the trail was not forever lost to him.

---

# Department of Hospitals and Medical Care

| | | |
|---|---|---|
| **Files carried over from previous years** | | **3** |
| **Files opened in 1986** | | **38** |
| **Investigated** | | **9** |
| Subsequently discontinued | 0 | |
| Complaint justified | 3 | |
| No administrative error identified | 6 | |
| **Not investigated** | | **22** |
| Resolved informally | 5 | |
| No authority to investigate | 7 | |
| Other remedy or appeal available | 8 | |
| Declined on discretionary grounds | 2 | |
| **Files closed in 1986** | | **31** |
| **Files carried over to 1987** | | **10** |

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**Case summary 18**

### Arizona Trip Expensive for Heart Patient

Even when no administrative error has been shown to exist, our office may be able to assist a complainant by acquiring vital information that may have been overlooked before our involvement. In this case it meant a saving of several thousand dollars to a man faced with expensive medical bills.

An Alberta man who underwent heart surgery in the fall was given a clean bill of health prior to travelling to his winter home in Arizona. In December he was rushed to hospital with chest pains and was given a coronary bypass. The resulting medical and hospital bills came to more than $50,000.

The company with which the man had taken out travel insurance refused to provide reimbursement because of a clause that excluded coverage of conditions treated within the previous three months. The Alberta Health Care Insurance Plan and Blue Cross covered approximately 20 percent of the amount, leaving him owing $40,000. His request to have the assessment reviewed by Alberta Health Care was refused, so he sought our assistance.

The department advised us that no errors had been made in reviewing to what extent AHCIP would cover the complainant's out-of-country medical expenses, and said that normal procedures would not allow for any greater payment. However, the director of the claims branch suggested that there was a possibility of coverage being provided by the Emergency Financial Assistance Program. AHCIP had not informed the complainant of this avenue in their earlier dealings with him.

As the complainant was still in Arizona during our investigation, we acted as a liaison between him and the Emergency Financial Assistance Committee during subsequent months, and eventually a settlement was reached that the complainant found to be satisfactory.

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**Case summary 19**

### A Denturist's Billing Problems

An elderly denturist from rural Alberta expressed concern about delays in some payments and refusals of others by the Alberta Health Care Insurance Plan. He cited an instance in which AHCIP had waited four months to tell him that services provided to one client were ineligible because she had received similar treatment during the past five years. He objected that he often had no way of knowing precisely what treatment a client had received and when, and he was pessimistic about his chances of collecting from clients for ineligible services he had delivered in good faith. "No one would give up their teeth," he explained "and, as in this case, I doubt if some would be able to pay for them."

The department explained to us that the reason it took so long to process the denturist's forms was that they they were often improperly filled out and always done by hand, so that they could not be read by an Optical Character Recognition system and had to be manually reviewed. Departmental officials also noted that

the denturist's clients had not requested from AHCIP written confirmation of their benefit status — a practice they recommended as a matter of course to enable a denturist and his or her client to discuss financial arrangements prior to service being performed.

In an attempt to clear up possible sources of confusion, we arranged a meeting between AHCIP and the denturist, with a representative from our office in attendance. Specific claims were analyzed, errors on the part of both the denturist and the department were identified and sorted out, and the denturist was provided with a refresher course on how to fill out his forms. The denturist was pleased to be provided with a contact who would help him with any future difficulties, and the departmental representatives were happy about the way they had been brought into the discussion and about the manner in which a resolution had been effected.

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**Case summary 20**

### Subsidy Erases Years of Debt

A former Alberta resident who had moved to Saskatchewan wrote to us to complain about letters from the Alberta Health Care Insurance Plan demanding payments for arrears and threatening to hand over the account to a collection agency. She said her various attempts to pay the debt in the past had been foiled by bungling on the part of AHCIP staff, and she was worried that things had now reached a stage where her credit rating would be affected.

We found no evidence of mistakes by AHCIP, and the question of her outstanding debt proved to be academic in any case, as we discovered that she was eligible for a retroactive subsidy plan that would render her debt non-existent. In addition, we passed on to her the deputy minister's assurance that there was no danger of her credit rating having been affected, as the collection agency used by AHCIP is under contract to maintain secrecy.

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# Department of Labour

| | | |
|---|---|---|
| **Files carried over from previous years** | | **4** |
| **Files opened in 1986** | | **20** |
| **Investigated** | | **12** |
| Subsequently discontinued | 2 | |
| Complaint justified | 1 | |
| No administrative error identified | 9 | |
| **Not investigated** | | **6** |
| Resolved informally | 1 | |
| No authority to investigate | 1 | |
| Other remedy or appeal available | 2 | |
| Declined on discretionary grounds | 2 | |
| **Files closed in 1986** | | **18** |
| **Files carried over to 1987** | | **6** |

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# Department of Municipal Affairs

| | | |
|---|---|---|
| **Files carried over from previous years** | | **4** |
| **Files opened in 1986** | | **26** |
| **Investigated** | | **13** |
| Subsequently discontinued | 4 | |
| Complaint justified | 3 | |
| No administrative error identified | 6 | |
| **Not investigated** | | **11** |
| Resolved informally | 1 | |
| No authority to investigate | 4 | |
| Other remedy or appeal available | 5 | |
| Declined on discretionary grounds | 1 | |
| **Files closed in 1986** | | **24** |
| **Files carried over to 1987** | | **6** |

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**Case summary 21**

### A $4,000 Oversight

At a time of soaring interest rates, the Alberta government used the Heritage Trust Fund to implement a program to shield homeowners faced with high rates on their mortgages. Those who qualified under the Mortgage Interest Reduction Program had their actual rates reduced by means of repayments from the government.

Farmers were eligible for the program, but their eligible mortgage amount was reduced by the portion of the interest payment on the mortgage for which an income tax deduction was claimed. A farming family who applied for the benefits of the program had received over $4,000 when they were told by the department that an error had been made. As the mortgage interest on their farm was 100 percent tax deductible, they were in fact ineligible for the program and would have to return the money already received.

The family objected. Their application form had been filled out honestly and completely. They had thought they were eligible, and the government had approved their application. Moreover, they had recently purchased another half section of land, and their financial resources were stretched to the limit. They appealed the decision, and the department reduced their debt by $1,700 to take into account the fact that the farmhouse itself was not wholly tax-deductible.

Not satisfied with such a half measure, the family came to us. They thought it wrong that they should have to pay for a public servant's oversight after they had acted in good faith. We agreed, especially in view of the fact that the program regulations were sufficiently complicated that the average applicant could not be expected to know when a mistake had been made; all he or she could do was provide the information requested as completely as possible. We recommended to the department that it waive the outstanding debt, and the department agreed to do so.

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**Case summary 22**

### Wrong Address Sets Law in Motion

A letter that didn't reach its intended recipient led to unpleasant and expensive consequences for the owners of a rental property mortgaged to the Alberta Mortgage and Housing Corporation.

A husband and wife complained to us that they had received no notice of foreclosure proceedings initiated by AMHC and had been unaware that their mortgage payments hadn't cleared the bank. When they discovered the bad news, they promptly paid their arrears, but not in time to avoid a bill from the corporation for several hundred dollars in legal fees. They hadn't received the demand letter that the AMHC said it had sent them, and presumed it was because the corporation had failed to record their change-of-address notice.

The corporation's explanation suggested that the complainants had been unaware of the default of their payments primarily because they had been out of the country for an extended period. Correspondence from the AMHC had been returned unclaimed, so the corporation had assumed, logically but incorrectly, that the

couple could be reached at the address registered on the certificate of title of the subject property. Subsequent correspondence was sent there, but the property had been leased, and the complainants only found out what had happened when their tenants received an "assignment of rents" notice from AMHC.

Even though there was no evidence of fault on the part of AMHC, its president told us that in view of the mortgagors' prompt restitution and previous unblemished record of payments, the corporation had decided to absorb the cost of the legal fees.

The complainants, not surprisingly, were pleased with the result. In a letter of thanks, they told us that "it is gratifying to observe your office coming to the rescue in problems such as ours — no matter how small".

# Officers of the Legislative Assembly

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **1** |
| **Investigated** | | **0** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 0 | |
| **Not investigated** | | **1** |
| Resolved informally | 1 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **1** |
| **Files carried over to 1987** | | **0** |

# Public Affairs Bureau

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **0** |
| **Investigated** | | **0** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 0 | |
| **Not investigated** | | **0** |
| Resolved informally | 0 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **0** |
| **Files carried over to 1987** | | **0** |

# Department of Public Safety Services

| | | |
|---|---|---|
| **Files carried over from previous years** | | **1** |
| **Files opened in 1986** | | **0** |
| **Investigated** | | **1** |
| Subsequently discontinued | 0 | |
| Complaint justified | 1 | |
| No administrative error identified | 0 | |
| **Not investigated** | | **0** |
| Resolved informally | 0 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **1** |
| **Files carried over to 1987** | | **0** |

# Department of Public Works, Supply and Services

| | | |
|---|---|---|
| **Files carried over from previous years** | | **1** |
| **Files opened in 1986** | | **9** |
| **Investigated** | | **5** |
| Subsequently discontinued | 0 | |
| Complaint justified | 1 | |
| No administrative error identified | 4 | |
| **Not investigated** | | **3** |
| Resolved informally | 0 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 2 | |
| Declined on discretionary grounds | 1 | |
| **Files closed in 1986** | | **8** |
| **Files carried over to 1987** | | **2** |

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**Case summary 23**

### Low Bidder Loses Contract

The manager of a construction company put in a bid to supply trailers was dismayed to learn that the contract had been awarded to another contractor even though his was the lowest offer. The reason given was that he was unable to meet the required delivery date.

He complained to us that on previous bids he had been given an opportunity to revise his proposed delivery schedule, and he thought he should have been informed if the department was changing its policy. He further claimed that the tender system discriminates against small companies because the required times of delivery are so short.

We were advised by the department that in cases where early delivery is crucial, the tender document includes the clause: "Prompt delivery is of primary importance and may be the determining factor in contract awards." Such had been the case on the tender in question. Furthermore, it had never been departmental practice to permit changes in delivery dates once tenders had been opened.

We recommended to the department that an effort be made to arrange where possible for earlier bidding in recognition of the needs of smaller firms. In the case at hand, the tendering process had been the result of a last-minute budget reallocation, and consequently a generous lead time had not been possible. However, the department expressed an appreciation of the necessity for efficient forecasting and agreed to emphasize it more strongly in future.

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# Department of Recreation and Parks

| | | |
|---|---|---|
| **Files carried over from previous years** | | **1** |
| **Files opened in 1986** | | **5** |
| **Investigated** | | **3** |
| Subsequently discontinued | 0 | |
| Complaint justified | 1 | |
| No administrative error identified | 2 | |
| **Not investigated** | | **2** |
| Resolved informally | 2 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **5** |
| **Files carried over to 1987** | | **1** |

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**Case summary 24**

### A Very Temporary Job

Temporary employees have none of the rights associated with full-time employment. The lack of job security can leave them in the lurch the moment an employer's needs change. What happened to the worker in the situation summarized below seemed particularly unfortunate after she became the innocent victim of a budgetary miscalculation.

A woman who was offered a three-month position as a groundsworker in a provincial park gave up her room in a nearby community to move into the staff residence at the park. Five weeks later the park ranger discovered that he had overestimated the amount of funds he had available for temporary staff. He asked the regional office for an extension to cover the groundsworker and was told it wasn't possible. He decided his only option was to lay off the worker, which he did by giving her three hours' notice.

The groundsworker was particularly upset because the loss of her job was compounded by the fact that she was left with nowhere to live. All she could do for the time being was move to her family's home in another part of the province.

The woman complained first to the Alberta Union of Public Employees, but learned that the AUPE agreement does not cover temporary employees in layoff matters. She went to the Employment Standards Branch of the Department of Labour and was told that AUPE members are out of their jurisdiction in such matters. Then she came to us.

The deputy minister agreed with us that the complainant should not be made to bear the burden of the consequences of the ranger's misjudgement. In an attempt to compensate her for her loss and inconvenience, the department offered a month's winter work in the area she had worked before. She said this would conflict with her college courses and asked if an arrangement might be made for the following summer. In the end, she accepted a four-month position as a summer ranger with a promise that she would be given an additional month's work at the end of the summer if she wanted it.

In addition, the department assured us that it would review the process that led up to the dilemma faced by our complainant in an effort to ensure that no such problems would occur again.

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# Department of Social Services

| | | |
|---|---|---|
| **Files carried over from previous years** | | **16** |
| **Files opened in 1986** | | **121** |
| **Investigated** | | **58** |
| Subsequently discontinued | 10 | |
| Complaint justified | 13 | |
| No administrative error identified | 35 | |
| **Not investigated** | | **55** |
| Resolved informally | 8 | |
| No authority to investigate | 6 | |
| Other remedy or appeal available | 31 | |
| Declined on discretionary grounds | 10 | |
| **Files closed in 1986** | | **113** |
| **Files carried over to 1987** | | **24** |

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**Case summary 25**

### The Fine Line Between Reasonable Care and Abuse

An employee at an institution for the mentally handicapped expressed concern about abuse of residents by staff members. He said that when he had brought the problem to the attention of management at the institution, not only had no action been taken but he was later subjected to harassment. It appeared to him that front-line staff were engaging in a coverup about the abuse and that management was doing its best to turn a blind eye to what was going on.

An extensive investigation was undertaken by our office in which a number of staff at the institution were interviewed separately. No cases of abuse were substantiated. Although the complainant's allegations seemed to have been sincere, it appeared that much of his information was second-hand and that many events may have been misinterpreted. While it was apparent that bad feelings existed between the complainant and his peers at the facility as a result of his aggressive approach regarding concerns about possible abuse, there was no evidence of harassment by management.

Our investigation of this complaint was particularly exhaustive not only because of the tension among staff but also because of the special nature of the relationship between staff and clients in a facility whose residents may have minimal communication skills and may act out their frustrations in a manner that requires physical intervention by staff members.

While we disagreed with the complainant that management had attempted to avoid awareness of abuse, we did perceive a need for increased rigour in the facility's policies regarding the reporting of possible abuse and the accountability of staff in direct contact with residents. Management personnel at the institution described the administrative quagmire that would result if every situation involving physical intervention were required to be documented in detail. There was clearly a need, however, to establish a functional guideline for determining when any given situation had crossed over the line from reasonable intervention to unwarranted interference, either physically or psychologically, with the well-being of residents.

In many cases this line is rather fine. The complainant cited an instance in which he said a staff member had wrapped a towel around the head of a resident. It appeared to us, after interviewing other witnesses, that what had really happened was that a staff member had held a towel in the air to block a resident's view of a dayroom during a standard "time-out" procedure that involves visually separating a resident briefly from other people. The staff member had not realized that such an action was potentially abusive; as a result, management held team meetings to convey to staff the need to clear variations from standard procedure with senior staff and also to reiterate its policy forbidding unnecessary interference with a resident's sensory perceptions.

We stressed our belief that reluctance to intrude upon the efficiency of staff should not stand in the way of documented accountability, especially in view of the vulnerability of persons who may be unaware of their own rights. Our discussions with management at the institution regarding practical means of identifying abusive situations without unduly hampering the operation of the facility with an excess of

paperwork took place at a time when policy reviews were implemented. The policy regarding abuse ultimately was amended to require that any physical contact with residents be documented unless it has been sanctioned in advance. An in-depth report is now required when an injury may have occurred, when any party believes staff powers may have been abused, or when physical intervention, even though apparently reasonable, has not been sanctioned as part of a resident's treatment plan.

**Case summary 26**

### Legal but not Fair

Should an overpayment that results from government error be recoverable? What happens when a citizen, in complete innocence, receives more than his due, spends it, and has an empty pocket when the government discovers its mistake? Even though the law was on the government's side when it sent a collection agency after a pensioner, we concluded that what was legal was not necessarily fair.

A recipient under the Assured Income for the Severely Handicapped program complained to us about the efforts of the Department of Social Services to force him to return pension funds.

A miscalculation of the man's income resulted in an overpayment of more than $6,000. When the error was discovered two years later, he was asked to execute a repayment agreement and did so. Later he appeared before the Citizens' Appeal Committee and told them he couldn't afford to pay the money back. The committee declined to render a decision after concluding that the matter was not one that could be appealed. When the man failed to fulfil the terms of the repayment agreement, the department handed the account over to Crown Debt Collections and placed a lien on the man's house, which he was attempting to sell.

The complainant told us that the department should have taken responsibility for its own error. He said he had provided accurate information about his financial affairs and had spent the money without knowing he had received too much, and now he and his wife were in such financial straits that repayment would be a difficult burden indeed.

The department admitted its error, but advised us that it had statutory authority to collect such an overpayment and that it was established practice to do so; moreover, only Crown Debt Collections had the authority to discharge a debt to the Crown.

On looking into the matter further, we learned that the complainant could barely read and had little idea of the nature of the document he had signed. It appeared that the Citizens' Appeal Committee had been unaware of the full circumstances in the signing of the agreement. When we brought this to the attention of departmental officials, they suggested that the complainant re-appeal to the committee. The complainant agreed to do so, and because an appeal process was being reinstituted, we put our investigation on hold.

The appeal committee, however, concluded that the repayment agreement was a legal document over which it had no authority, and suggested to the complainant that he see a lawyer if he wished to pursue the matter. We then decided to pursue a different tack and contacted an official at the Crown Debt Collections office, who told us that regardless of the existence of a repayment agreement, Crown Debt Collections could reduce or discharge a debt upon the recommendation of the Citizens' Appeal Committee. We relayed this information to a senior official in Social Services; he got in touch with the committee chairman, who consulted with the committee and reported that, given what we had learned, the committee would now be prepared to recommend that no further effort be made to collect the overpayment.

This was done, but before the debt could be forgiven, approval had to be received from Treasury Board. The delay that then ensued posed a problem for the complainant, who had received an offer on his house but was unable to proceed with it because of the lien placed on it by the government. After we brought this dilemma to the attention of Crown Debt Collections, it arranged to have the lien removed, and shortly thereafter Treasury Board directed that the debt be forgiven.

During our investigation, we expressed our concern as to whether or not the Citizens' Appeal Committee had acted correctly in concluding that it had no jurisdiction to examine the department's decisions with regard to the repayment agreement. As a result, the department sought legal advice, which suggested that the committee had been mistaken in ruling that the matter was not appealable. The Assured Income for the Severely Handicapped Act grants the committee power to hear appeals from decisions of the director on any matter respecting a handicap benefit. As a result, the department took steps to ensure that appeal panels would be aware of their discretionary power to reverse the decisions of a director regarding the calculation of overpayments.

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**Case summary 27**

### Twice Ineligible, Third Time Lucky

A young paraplegic woman came to us for assistance because all her efforts to get an income seemed to be going in circles.

The unfailing support of her parents, who drove her to and from work twice a day, enabled her to hold a job until the company moved its offices to another town. The prospects of her soon finding other employment were unlikely, as she boarded with her parents in an out-of-the-way community. She had no wish to be put in a position of depending on her parents' charity without being able to repay them for room and board or provide for her own necessities of life.

The woman had decided not to apply for unemployment insurance benefits after leaving her job as it seemed to make more sense to seek a long-term form of assistance. Moreover, she doubted that she would meet the UIC requirement that applicants be willing and able to work; she was more than willing, but the limitations imposed by her physical disability were exacerbated by her remoteness from urban centres and by the fact that she couldn't be away from home for more than a few hours at a time.

Instead she applied for benefits from the Assured Income for the Severely Handicapped program. Much to her surprise, her application was rejected because she was deemed to be employable. She assumed such a conclusion had been reached on the basis of her recent work history. She appealed to the Citizens' Appeal Committee, pointing out that the only reason she had been able to work was because of the extraordinary efforts of her parents to make it possible in her particular case. Her appeal was turned down, with the suggestion that she apply for UIC.

This she did, only to have her application refused. The time that had elapsed during the processing of her AISH application and appeals had caused her to miss the deadline for UIC eligibility.

We reviewed her AISH file and concluded that the decision to declare her ineligible had been a reasonable one, insofar as AISH regulations require an applicant to be completely unemployable; she had already shown herself to be physically capable of employment. We then met with the AISH worker, a social allowance worker and the family to look at other available options to provide her with the assistance she so clearly needed.

What became evident at the meeting was that since her financial circumstances had changed significantly since she had last applied for a social allowance six months earlier, she was now eligible for such assistance. This was arranged, and at our suggestion the social allowance worker made provision for her social allowance to be retroactive.

The complainant was greatly relieved at the result. "It is comforting," she said, "to have a bit of financial security after a long period of uncertainty."

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**Case summary 28**

### Unable to Work, but Short of Proof

Citizens who are inarticulate or uncertain how best to present their case when seeking government assistance may benefit by the intervention of someone who "knows the system".

A woman of nearly 60 who had been denied Assured Income for the Severely Handicapped benefits had a sorry tale to tell us. Her husband had immigrated to Canada with nothing and had gradually built up a successful business that enabled him and his wife to purchase a home. Then came a recession and, as a result, failure of the company. With neither husband nor wife employed, the couple had to sell several assets to obtain basic needs and were in danger of losing their home.

Evidence of a heart condition that prevented the woman from doing strenuous work had been presented to the AISH review committee, but her application had been turned down because the committee had not been satisfied that she was completely unemployable. She told us that she had never worked before. Her lack of skills precluded everything but janitorial jobs, but her doctor had told her she could only function in a bacteria and dust-free environment, and a heart condition prevented her from being on her feet for long. Training for desk work seemed pointless because she could barely read or write, and she was 80 percent blind in one eye.

We interviewed both her family doctor and her heart specialist and elicited the opinion that her heart condition, combined with her age and a severe situational depression, suggested that retraining of any sort might be dangerously stressful to her. With this information at hand, we approached AISH officials. Arrangements were made for a new medical assessment and a rehearing by the AISH committee, as the committee had not had the benefit of seeing a specialist's report when reviewing the original application. This was accordingly done, and the result was the woman received her AISH benefits.

In part, the difficulty faced by the woman was a result of the fact that medical criteria had to be met before any other factors could be considered. As a result, the woman's age and her inability to read or write were considered irrelevant criteria for an assessment of her capabilities. Her eligibility was perceived as borderline at best, and a large part of our role consisted in amassing sufficient evidence, with the cooperation of the woman's doctors, to demonstrate that she fell within the strictly medical guidelines governing AISH eligibility.

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**Case summary 29**

### The Baker Who Quit Too Soon

The circumstances of the summary below illustrate the importance of internal reviews in the Department of Social Services and the advantage of maintaining flexibility in decision-making processes.

A social assistance recipient landed a job at a bakery but quit after three days, saying that the equipment he had to work with was defective. When he applied to have his family's social assistance benefits reinstated, his request was turned down because he had not provided an adequate reason for leaving his job. He was told that instead of simply quitting, he should have reported the alleged defective equipment to the Labour Relations Board.

The man appealed without success to the Citizens' Appeal Committee, complained to his MLA, and then submitted a complaint to our office. We began an investigation and discovered that employees of the department were reconsidering the family's circumstances, as the complainant's wife was unemployable because of poor health. The department decided that she and the children should not suffer because of a mistake made by the complainant. Consequently their benefits of $728 a month were reinstated, and the complainant was advised that his personal basic allowance of $191 a month would be restored once he had provided verification that he was actively looking for a job.

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# Department of the Solicitor General

| | | |
|---|---|---|
| **Files carried over from previous years** | **18** | **(13)*** |
| **Files opened in 1986** | **234** | **(213)** |
| **Investigated** | **86** | **(75)** |
| Subsequently discontinued | 10 | (10) |
| Complaint justified | 16 | (13) |
| No administrative error identified | 60 | (52) |
| **Not investigated** | **146** | **(136)** |
| Resolved informally | 24 | (23) |
| No authority to investigate | 9 | (4) |
| Other remedy or appeal available | 97 | (95) |
| Declined on discretionary grounds | 16 | (14) |
| **Files closed in 1986** | **232** | **(211)** |
| **Files carried over to 1987** | **20** | **(15)** |

* Bracketed figures designate complaints regarding the administration of provincial correctional institutes.

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**Case summary 30**

### His Own Worst Enemy

A number of the prisoners who complain to us about disciplinary constraints imposed on them by correctional officers are so embittered that they absolutely refuse to cooperate with the authorities in any way. In cases where an inmate's behaviour has landed him in segregation and he continues to respond with defiance and abuse, there is little we can do but suggest that he alter his attitude and behaviour if he wishes to achieve a restoration of his privileges.

An inmate serving time for assault in a correctional centre complained that he had been isolated in a Special Handling Unit for some weeks without justification. He said he wanted to move back into the general prison population and was being denied the opportunity to do so.

Originally the inmate had been segregrated following a series of incidents in which he had been abusive to correctional officers, thrown his eating utensils into the garbage, refused to make his bed, and violated a number of other regulations.

On being released from "the digger", he was given the option of returning to the cell unit from which he had come or moving to a Special Handling Unit with 23-hour lock-up. He chose the latter, stating that if he was returned to his unit there was a good chance he would get into a fight with an inmate he had difficulties with and thus end up getting further disciplinary treatment.

While in the SHU, he continued to be abusive and, in his words, to "refuse to play their games" — i.e., to follow regulations. In an effort to motivate him, the administration moved him up to Phase 2 of four phases that prisoners must pass through to earn a return to the general population. This involved his working as a cleaner. He continued to be uncooperative and didn't do the job satisfactorily; consequently he was returned to Phase 1.

The complainant was quite frank with us that he would not cooperate with authority figures in the institution. In the words of the director, he was "nickel and diming himself to death" through continuous minor infractions. It was apparent that the inmate was the creator of his own misfortune under the circumstances, and his complaint was not supported.

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**Case summary 31**

### Police Comment Leads to Time in Solitary

An inmate, assaulted shortly after going to jail, identified his attacker from photographs shown to him at his hospital bed by an RCMP investigator. After correctional officials learned from the investigator that our complainant was to be charged with the assault, a disciplinary hearing was held which resulted in his being placed in solitary confinement. The victim, meanwhile, had thought better of laying charges after realizing that his social life in jail might be less than satisfactory if he did so.

The inmate initially identified as the attacker complained to us that he was innocent. We

talked to the RCMP and learned that the results of their investigation had been inconclusive but that there was a strong suspicion that the assault had been committed by someone else whom the victim had identified first before changing his mind out of fear of retribution.

As a result of our investigation, the Correctional Services Division altered its policy to provide that the results of RCMP investigations would henceforth be obtained in writing prior to any disciplinary action being taken by an institution. In addition, we received an assurance that our complainant's conviction by the disciplinary board would be expunged from his record and would not be held against him.

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**Case summary 32**

### Love Linked to Behaviour Modification

An inmate said that he would like to be transferred to another provincial correctional centre to be near his common-law-wife. As he had a long and problematical institutional record, it did not appear likely a transfer was imminent and our investigator told the inmate that. He blew up and left the interview room.

However, the story did not end there. After calming down, both the inmate and his wife continued to write the Ombudsman letters asking for a transfer. Upon rechecking the inmate's progress, our investigator was pleasantly surprised to see that love appeared to have altered the inmate's behaviour in the correctional centre. Although he was still a handful and was still being withheld from the general inmate population, the staff at the centre reported that for the first time in recent memory the inmate was attempting to work within the system's structure to earn consideration for a transfer. Our investigator discussed the situation with the corrections staff, and the institution agreed it was a good idea to reward positive behaviour and implemented the transfer request.

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**Case summary 33**

### Quiet Questions Disprove Claim

In correctional centres, information cannot always be taken at face value. Often what an inmate does, rather than what he says, is given the most weight.

An inmate wrote to the Ombudsman complaining that he was unfairly labelled a discipline problem. He also commented that he was suffering from a loss of hearing and nothing was being done to correct the situation. On the other hand, the institution replied that the inmate's hearing seemed selective. He had trouble hearing orders given to him by the corrections staff, but he always answered the dinner bell. While talking to him about his discipline problems, our investigator radically altered both the volume and tone of his questions. No matter how they were posed, the inmate had no trouble hearing them. In the absence of evidence to support the inmate's allegation of a hearing loss, it was concluded that there was no reason to support the complaint.

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**Case summary 34**

### When First We Practise to Deceive . . .

An inmate was given a temporary absence pass to the community earlier than otherwise would have occurred in order to look after her newborn baby. There were several conditions on her release, including a requirement to continue to live at the house of her sponsor throughout her release period.

In spite of the doubts of some officials about her ability to cope with the situation, the woman did well and abided by the terms of her probation right up until the final two weeks of her sentence. At that point her sponsor experienced accommodation problems and our complainant made arrangements to live on her own — a reasonable decision considering the short time left on her sentence. However, when asked about the situation by her probation officer, the woman denied she was leaving the

residence of her sponsor or that she was even making alternative arrangements — both violations of her temporary absence.

The probation officer checked with the woman's social worker and confirmed that arrangements were being made for her to live on her own. As she had been lied to, the probation officer felt compelled to put the woman back in jail even though by this time there was only one day left in her sentence. The woman was taken in and released the next day. Adding to the turmoil was the fact the woman had managed to leave her baby with a friend before being taken in. However, as she refused to tell the probation officer what arrangements had been made, the probation officer called Child Welfare to say she was worried about the baby.

In the end, the Ombudsman concluded that since she had been lied to, the probation officer had acted correctly. Moreover, after some discussion, the complainant came to the realization that she had been the author of her own misfortune. Had she told the truth in the first place, the entire skirmish would have been avoided.

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**Case summary 35**

### The Liquor Store Firing

A student who had been a casual employee at a liquor store sought our assistance after being fired. He had appealed the termination through the available grievance procedures, and his union had advised him not to pursue it any further after he denied having signed a note prepared by the store manager that was critical of his performance.

He had earlier worked part-time for the Alberta Liquor Control Board, but a change in store hours led to his being laid off. His final performance appraisal noted that he had been a conscientious, hard-working employee and an asset to the board.

A few weeks later the student was rehired, and during the next few months he received several warnings from the manager about his slowness and lack of attentiveness. Only one of the warnings was documented. He later sought employment at another liquor store without first notifying his manager. When she found out, she told him he was fired, but later had to revoke his dismissal when it was brought to her attention that casual employees can only be terminated in writing.

On the student's first day back to work, the manger talked to him about inadequate performance and wrote a note to document it. This was the note that was produced as evidence during the grievance proceedings and that he denied signing. He was subsequently dismissed with a written notice on which the manager recommended that he not be rehired by the ALCB.

We took the disciplinary note to an expert in handwriting analysis, who gave the opinion that the complainant's signature had been forged. In view of the documentation concerning the complainant's earlier satisfactory service and the fact that the validity of one of the two disciplinary notes had been placed in question, it appeared to us that the liquor store manager had insufficient reason to recommend that the complainant not be hired again. We recommended that he be placed on the casual re-employment list under a different manager, and the board accepted our recommendation.

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**Case summary 36**

### Spoiled Liqueur Irks ALCB Customer

Our complainant returned a bottle of cream liqueur to the liquor store, saying the contents had congealed and were foul-smelling. He demanded a refund.

The manager was not receptive, especially on discovering that the customer had kept the bottle in his liquor cabinet for a year before cracking the seal. Anybody, he said, ought to know that some liqueurs can go bad.

Not good enough, said the irate customer. If that's the case, then the bottle ought to have a warning to that effect such as a "best before" date.

Sorry, said the manager, ALCB policy is that refunds will be given only within two months from date of purchase.

We talked to ALCB officials and discovered that in the past year store managers had received about 11,000 written complaints, the majority of which concerned spoiled liquor. The great majority had been settled to the customers' satisfaction by store managers, who are generally guided by the two-month limitation but have discretion to go beyond it in unusual circumstances.

The policy seemed reasonable to us, given the propensity of some liquors to spoil after an indeterminate time. However, we recommended to board officials that notices be posted in stores to advise customers of the refund policy and to inform them that details of storage requirements and shelf life for various spirits are available from store managers.

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# Department of Technology, Research and Telecommunications

| | | |
|---|---|---|
| **Files carried over from previous years** | | **3** |
| **Files opened in 1986** | | **15** |
| **Investigated** | | **5** |
| Subsequently discontinued | 1 | |
| Complaint justified | 1 | |
| No administrative error identified | 3 | |
| **Not investigated** | | **9** |
| Resolved informally | 2 | |
| No authority to investigate | 2 | |
| Other remedy or appeal available | 5 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **14** |
| **Files carried over to 1987** | | **4** |

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# Department of Tourism

| | | |
|---|---|---|
| **Files carried over from previous years** | | **0** |
| **Files opened in 1986** | | **0** |
| **Investigated** | | **0** |
| Subsequently discontinued | 0 | |
| Complaint justified | 0 | |
| No administrative error identified | 0 | |
| **Not investigated** | | **0** |
| Resolved informally | 0 | |
| No authority to investigate | 0 | |
| Other remedy or appeal available | 0 | |
| Declined on discretionary grounds | 0 | |
| **Files closed in 1986** | | **0** |
| **Files carried over to 1987** | | **0** |

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# Department of Transportation and Utilities

| | | |
|---|---|---|
| **Files carried over from previous years** | | **2** |
| **Files opened in 1986** | | **18** |
| **Investigated** | | **4** |
| Subsequently discontinued | 0 | |
| Complaint justified | 2 | |
| No administrative error identified | 2 | |
| **Not investigated** | | **7** |
| Resolved informally | 0 | |
| No authority to investigate | 3 | |
| Other remedy or appeal available | 3 | |
| Declined on discretionary grounds | 1 | |
| **Files closed in 1986** | | **11** |
| **Files carried over to 1987** | | **9** |

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**Case summary 37**

### Cup of Tea Incites Lawsuit Threat

A woman offered a cup of tea to an Alberta Government Telephones employee who was installing a telephone jack in her house. When he spilled the tea on a white carpet, he assured her that AGT would cover the cost of cleaning it. A carpet cleaning service was unable to remove the stain, so she paid its $24 bill and called her insurance agent, who told her there was no point making a claim as her deductible was $100 and the carpet was valued at $90.

She called the AGT claims department and was told by the man she talked to that her claim could not be accepted as company employees were not allowed to drink tea on the job. When she threatened to take the matter to small claims court, he told her he would not accept any court service of documents and neither could the man who had spilled the tea. "I'm afraid his attitude has been 'tough luck, lady', " she said in her letter of complaint to us.

Following our intervention on her behalf, AGT promptly decided to reimburse the woman both for the cleaning costs and for the cost of replacing the carpet. It said that the claims department must have been under the mistaken impression that the installer had accepted her small kindness after completing his work, in which case, AGT was advised by its legal department, he would have ceased to have been acting as an agent of Alberta Government Telephones and instead would have assumed a guest/hostess relationship with the woman, thus releasing AGT from responsibility for his actions.

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**Case summary 38**

### Calling Card Abuse

A resources company employee got an unexpected surprise when an AGT operator intercepted his phone call to tell him the company calling card to which he was billing the call was invalid and had been for some months. AGT then charged him for the $700 worth of calls billed to the card from his home phone.

He refused to pay. He said his company hadn't informed him that it had cancelled the card, so he had been acting in good faith; AGT should go after the company, not after him. Moreover, he wondered why it had taken AGT several months to intercept his calls and inform him the card was invalid. Had it not been for their own negligence, he would never have run up such a bill. At this point AGT flexed its corporate muscles and disconnected his phone. He paid, and complained to us.

AGT referred us to the item in its General Tariffs that provides that a customer is liable for all calls originating at a telephone in his name. The rationale for such a provision is the limitless potential for undetectible fraud without it.

We asked AGT why the complainant's calls were not intercepted months earlier. Their investigator explained that operators have no indication that a calling card is invalid unless it is hot-listed for non-payment of bills. The sheer volume of numbers would make it impossible to provide operators with such information. The

company's card had been hot-listed shortly before the complainant's call was intercepted.

We also found out that some time before his call had been intercepted, the complainant had been billed for calls charged to the card. This threw into doubt his statement that he had had no knowledge of the cancellation. A director of the company indicated that the complainant had been informed of the cancellation.

In consideration of the doubt cast on the credibility of our complainant and of the information provided by AGT, we did not conclude that the complainant had been treated unfairly.

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**Case summary 39**

### The Highway That Grew

When a southern Alberta woman moved into a new home, her house was on level ground. Later her street was upgraded, and its surface rose a couple of inches. Years passed, the street turned into a busy highway, and it grew higher and wider.

Every time the Department of Transportation widened and resurfaced the highway, it grew a little more and advanced a little closer to the woman's front door. It got so close she couldn't park her car in front of her house any more and had to leave it on the other side of the road. By the time she had lived in the house for fifty years, the highway was four feet higher than her yard. The incline was so steep that there was no way of getting a driveway in. On one occasion she broke her leg when she fell off the highway trying to walk home from her car. With each new "improvement", she felt like her house was sinking out of sight before an advancing mountain of asphalt.

The woman's concern increased when her husband developed a condition that occasionally required immediate medical attention. On more than one occasion ambulances were unable to get directly to the house, resulting in the loss of precious minutes.

Finally she wrote about the problem to her MLA, who contacted the Minister of Transportation. The MLA told the woman that the minister had authorized the immediate construction of a retaining wall and a sidewalk. Some of the woman's neighbours, who had access to side streets, objected to this plan, so the project was put off. In desperation, the woman wrote to us to see if we could help.

It was apparent from our investigation of the complainant's living situation that there was no easy way of improving accessibility to the house. A sidewalk with steps up a retaining wall would still require the complainant's husband to cross a busy highway to get to the family car, and the alley behind the house was too narrow to provide for the creation of a parking space at the exit.

The only reasonable solution seemed to be an outright purchase of the house by the Department of Transportation, enabling the couple to move elsewhere. The department accepted our proposal to that effect, and agreed as well to pay for the couple's moving expenses. The woman and husband found another home and were happy to see an end to their years of frustration.

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**Case summary 40**

### Grader Operator Miffed at Layoff

A permanent employee at a lumber mill left his job to take a temporary position as a grader opeator with the Department of Transportation. It seemed like a risky venture, but the supervisor who took him on told him that the job would later be coming up for competition as a permanent position and that the chances were extremely good that he would be picked for it, after training on the equipment.

The competition took place, the job went to another man, and the one who lost out was laid off. He said the supervisor's encouragement had been what decided him to take the job, and he thought it unfair that the position had gone to someone else who not only had little experience but was a resident of British Columbia. Moreover, he said, he knew of a similar

position that had been awarded without competition, and he didn't see why the department should change its practice in his case.

Our investigation showed that the complainant's assumptions were ill-founded. The successful applicant had considerably more experience than the complainant and was in fact a local resident. The awarding of a job without completition had taken place almost ten years earlier, when there had likely been a shortage of tradespeople in the area. We sympathized with the complainant's disappointment, but pointed out that the department had no commitments on hiring him for a temporary job and indeed had not been in a position to do so.

The complainant was not happy to hear what we had to tell him and criticized us for believing the department's story. In investigations of complaints where we have reason to doubt the word of a public official, we do not hesitate to exercise our authority to look at departmental documents, but in this case we had been provided with sufficient details to satisfy ourselves that the facts were as the department had presented them.

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**Case summary 41**

### The Going Rate on Gravel

Complainants seeking monetary compensation aren't always convinced that they get as much through our office as they might obtain by legal action, but they do have the satisfaction of knowing that our resolutions are usually prompt and always free.

When the Department of Transportation transferred some land to a contractor in return for another acreage it had expropriated to widen a highway, the agreement included a provision that allowed the department to remove gravel from an old highway fill on the land.

The contractor complained to us that the department had not abided by the agreement. Gravel had been taken from an area outside the agreed-upon site, he said, and the department should pay the $4 per cubic yard he was asking. Not so, said the department. While such a rate might be reasonable for prepared, crushed gravel, it was a ridiculous price for the material in question, which had merely been used to build up the roadbed and for landscaping. Fifty cents a yard was a fair going rate, the department suggested. There was also disagreement about the amount of material that had been improperly removed.

After a close examination of the site with the various parties involved, we were able to arrange a consensus about the yardage taken and about a fair price that fell between the extremes proposed by either side. In addition, we suggested that the department pay the complainant what it would cost him to remove old pipes dumped on the land during operations conducted by the department.

Neither side was entirely happy about the proposal. The department wasn't convinced that it was responsible for the pipes, but it agreed to pay the suggested compensation to settle the matter. The complainant wasn't sure that a fair per yardage price had been arrived at, but given the alternative of going to court, with all its costs and delays, he expressed satisfaction with the compromise we had reached and signed a form releasing the government from further claims.

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# Department of Treasury

| | | |
|---|---|---|
| **Files carried over from previous years** | | **1** |
| **Files opened in 1986** | | **20** |
| **Investigated** | | **5** |
| Subsequently discontinued | 1 | |
| Complaint justified | 2 | |
| No administrative error identified | 2 | |
| **Not investigated** | | **10** |
| Resolved informally | 2 | |
| No authority to investigate | 4 | |
| Other remedy or appeal available | 2 | |
| Declined on discretionary grounds | 2 | |
| **Files closed in 1986** | | **15** |
| **Files carried over to 1987** | | **6** |

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**Case summary 42**

### A Tax Break for Organic Cows

Rejected applicants for government grants sometimes jump too quickly to conclusions about a hardnosed government. The most important rule in filling out applications is: don't spare the details. Clairvoyants are much more likely to become brokers than they are bureaucrats.

During one of our advertised visits to rural communities to hear local concerns, a farmer showed up to object most strongly to a letter from Alberta Treasury advising him that he was ineligible to use marked (purple) fuel, which costs considerably less than other gasoline.

The farm fuel tax rebate is a long-established government program to assist farming operations whose revenue exceeds expenses incurred and is reported as agricultural income for tax purposes. The complainant had taken over the farming operation from his father, after the business fell on hard times, and had recently incurred considerable expense in an attempt to restore the farm to a profitable business. His aim was to produce a herd of cattle raised entirely on unpolluted well water and on hay that had not been sprayed with chemicals, and he had been approached by many people interested in purchasing beef produced "the natural way".

"If I were a small business trying to get started at making tee shirts or candles or anything, the government would have some sort of loan or grant for me," he argued. "But being a small operator on a small farm, I am not recognized."

Our investigation of the matter turned out to be short and sweet, for the letter of complaint to us provided information that had not been included in the farmer's application and was sufficient for the department to promptly reverse its decision about his eligibility.

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**Case summary 43**

### Checking the Terms of a Term Deposit

A husband and wife who had deposited a $2,100 RRSP contribution in a five-year fixed-rate term deposit were told by Revenue Canada that they had contributed $100 beyond their entitlement. The overpayment was refunded, at their request, by the Treasury Branch that handled their account.

Seven months later, on receiving their semi-annual statement, they discovered that the Treasury Branch had cancelled their term deposit and purchased a new one at the prevailing rate of interest, which was lower than it had been on their original term deposit. In addition, they were penalized 2 percent for terminating their contract by withdrawing part of their term deposit.

When the couple objected, Treasury Branch offered to cancel the five-year contract and reinvest the funds in a one-year deposit. This did not satisfy the couple. They complained to us that there had been nothing in their RRSP contract to indicate that a refund of excess contributions would result in cancellation of the contract.

On receiving notice that we had accepted the complaint for investigation, the superintendent of Treasury Branches told us

that Treasury Branches had decided to reinstate the terms of the original contract in all respects with the exception of the refunded amount, as a gesture to the complainant's "apparent lack of business acumen". He said the complainants had in effect revoked their contract by withdrawing funds from a fixed-rate term deposit, and that it is standard industry practice to reinvest the remaining funds in the same way at the prevailing rate in the absence of contrary instructions from a depositor, and to apply a penalty when an annuitant breaches a term agreement for any reason.

The superintendent also said that it is standard practice to send out statements on a semi-annual basis — hence the delay in informing the couple of the reduced interest rate at which their funds had been reinvested. We noted that there was nothing in the contract to inform the couple of the consequences of making a withdrawal and suggested that a cautionary note be appended to RRSP agreements in future. The superintendent agreed that it would be a good idea and said that Treasury Branches had already decided to put it into effect.

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# EXCERPTS FROM THE OMBUDSMAN ACT

The excerpts that follow describe the functions and duties of the Ombudsman, the types of complaints he will investigate and those he will not, and the essence of the procedure that takes place once the Ombudsman has accepted a complaint for investigation.

Functions and duties

**11**(1) It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Ombudsman may make an investigation either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

(3) The powers and duties conferred on the Ombudsman by this Act may be exercised and performed notwithstanding any provision in any Act to the effect

(a) that any decision, recommendation, act or omission mentioned in subsection (1) is final.

(b) that no appeal lies in respect thereof, or

(c) that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

Jurisdiction restricted

**12**(1) Nothing in this Act authorizes the Ombudsman to investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal consituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired, or

(b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings.

(2) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Court of Queen's Bench for a declaratory order determining the question.

Refusal to investigate

**14**(1) If in the course of the investigation of any complaint it appears to the Ombudsman

(a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he has availed himself of it, or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate any complaint

(a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or

(b) if in his opinion,

(i) the subject matter of the complaint is trivial,

(ii) the complaint is frivolous or vexatious or is not made in good faith, or

(iii) the complainant has not a sufficient personal interest in the subject matter of the complaint.

Conduct at investigation

**16**(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hear or obtain information from any persons he thinks fit and he may make inquiries he thinks fit.

Evidence at investigation

**17**(1) Subject to this section and section 18, the Ombudsman may require any person who, in his opinion, is able to give any information relating to any matter being investigated by him

(a) to furnish the information to him, and

(b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and that may be in the possession or under the control of that person,

whether or not that person is an officer, employee or member of a department or agency and whether or not the document, paper or thing is in the custody or under the control of a department or agency.

Procedure after investigation

**20**(1) This section applies when, after making an investigation under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

(a) appears to have been contrary to law,

(b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,

(c) was based wholly or partly on a mistake of law or fact, or

(d) was wrong.

(2) This section also applies when the Ombudsman is of the opinion

(a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised

(i) for an improper purpose,

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations,

or

(b) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, when this section applies, the Ombudsman is of the opinion

(a) that the matter should be referred to the appropriate authority for further consideration,

(b) that the omission should be rectified,

(c) that the decision should be cancelled or varied,

(d) that any practice on which the decision, recommendation, act or omission was based should be altered,

(e) that any law on which the decision, recommendation, act or omission was based should be reconsidered,

(f) that reasons should have been given for the decision, or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion and his reasons for it to the appropriate Minister and to the department or agency concerned, and may make any recommendations he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make any report to the Legislature on the matter that he thinks fit.

(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.